



## CITY OF ATLANTA

Kasim Reed  
Mayor

226 Peachtree Street, SW  
Atlanta, Georgia 30303  
(404) 546-6900

Atlanta Police Department  
George N. Turner  
Chief of Police

December 13, 2010

Ms. Joy Morrissey, Board Chair  
Atlanta Citizen Review Board  
City Hall Tower, Suite 9100  
55 Trinity Avenue, SW  
Atlanta, Georgia 30303

RE: Complaint #10-07/Domice Irving

Dear Ms. Morrissey:

I am in receipt of the Atlanta Citizen Review Board's letter dated September 13, 2010, recommending that the allegation that Investigator Andrew Silberman falsely arrested Domice Irving on September 29, 2009, at 855 Coleman Street be Sustained. A letter dated September 17, 2010 was forwarded to you advising the Atlanta Police Department had commenced its own investigation and upon its completion, I would inform the Citizen Review Board of my decision on its recommendation.

Based upon its investigation, the Atlanta Police Department's Office of Professional Standards has concluded that Investigator Silberman should be Exonerated of the charge of appropriate action required. Through a review of Investigator Silberman's investigative file and the Fulton County Suppression Hearing transcript, it was determined that the investigator acted appropriately; following all procedures and policies of the Department in his investigation and in the search warrant execution at 855 Coleman Street. The judge at the hearing suppressed the evidence of the key found in Mr. Irving's pocket subsequent to his arrest after consideration of case law in detaining a person on the front porch of a location where a search warrant is to be executed. Evidence found inside the house as a result of the search warrant, including Mr. Irving's black book bag, were kept as evidence for further prosecution of the charges.

During the course of its investigation, the Office of Professional Standards also spoke with the Assistant District Attorney, Blair Shores, who argued against the suppression of evidence in the arrest of Mr. Irving. He informed the Office of Professional Standards that "Without this evidence, we felt there was not enough of a nexus between the defendant and the drugs in the home. So, we placed the case on the dead docket." The case was not

Ms. Joy Morrissey, Board Chair  
Complaint #10-07/ Domic Irving  
December 13, 2010  
Page 2

dismissed by the court. And, even if a case is dismissed or dead docketed, that does not conclude the arresting officer did not have sufficient probable cause to make the arrest. In this case, there was physical evidence that linked Mr. Irving to the house searched and contraband inside. Case law supports that an officer can detain a person on or around premises during the execution of a search warrant (Michigan v. Summers, 452 U.S. 692 [1981]), particularly for the purpose of officer safety (O.C.G.A. 17-5-28). Not only did the team have to contain a person on the porch, at the front door of a home where they were about to execute a search warrant, but they also had to sufficiently establish after the search his connection to the location and the black book bag, along with the narcotics found inside. ADA Shores further stated to the Office of Professional Standards, "As to whether an [sic] evidence found could be used in a criminal case, the case law is mixed and we lost this motion. However, the detention is necessary and proper." ADA Shores also expressed to the Office of Professional Standards that the Atlanta Citizen Review Board only contacted Mr. Irving's defense attorney for her input on the case and never spoke with him or, as far as he knows, reviewed the court transcript, "the only neutral source of information in this case." The District Attorney's office could decide at a later date to go forward with the case against Mr. Irving using evidence obtained from Investigator Silberman's search warrant and that evidence could be used to prosecute others later arrested as a result of that search.

It should be noted that Mr. Irving had a probation violation warrant on him at the time of his arrest by Investigator Silberman and possibly perjured himself about being on probation during the suppression hearing for pleading guilty on firearms and drug charges in 2006.

Having assessed the findings of both the Atlanta Citizen Review Board and the Department's investigative summaries, I reject the recommendation of the Citizen Review Board that the false arrest allegation against Investigator Silberman be Sustained.

Major E. B. Dancy, Commander of the Office of Professional Standards, can be contacted at (404) 658-7028, if you have any further concerns regarding this complaint.

Sincerely,

  
George N. Turner  
Chief of Police

GNT/sas

cc: Ms. Cristina Beamud, Executive Director/ACRB  
Assistant Chief P.N. Andresen  
Major E. B. Dancy  
File